

1 front of me. If you want me to review a specific invoice I
2 can tell you my thoughts on it.

3 Q If I can, well, I'm asking you, I'm directing your
4 attention to the April 4th, 1990 invoice.

5 JUDGE CHACHKIN: That's page 17.

6 MR. HOLT: Page 17.

7 WITNESS: Oh, I'm sorry.

8 JUDGE CHACHKIN: Of Mr. Berfield's testimony.

9 WITNESS: I forgot we were in this other document.

10 BY MR. HOLT:

11 Q Do you have that before you?

12 A Yes, I have it before me.

13 Q Now, isn't it a fact that during the period when the
14 Ft. Lauderdale proceeding was pending, that invoices from
15 Cohen and Berfield that were directed to Adwave were sent to
16 you at Raystay Company care of Mr. George Gardner, P.O. Box
17 38, Carlisle, PA, 17 --

18 A Yes, yes. That's the address that they were using.

19 Q If I can direct your attention to a document that's
20 been marked for identification as TBF Exhibit 283, it's in the
21 thin volume of documents that has a blue cover.

22 A Yes, I have it.

23 Q Okay. Do you recognize the signature on this check
24 as yours?

25 A Yes.

1 Q And I take it that Adwave maintained its own
2 checking account from which this check was drawn, correct?

3 A That's correct.

4 Q And that, now, if you referred back to TBF Exhibit
5 292, keep this document handy as well.

6 JUDGE CHACHKIN: Now he's talking about these
7 sheets.

8 WITNESS: These, here?

9 JUDGE CHACHKIN: Yes.

10 WITNESS: Okay. I have it.

11 BY MR. HOLT:

12 Q You have that before you? Referring to pages 6, I'm
13 sorry, pages 3 and 4 of that document, you have those pages
14 before you?

15 A Yes, I do.

16 Q Now, if you look at the, the, the figure set forth
17 next to the entry cumulative total due on the May 1, 1990
18 invoice, now that matches the figure set forth in what's been
19 marked for identification as TBF Exhibit 283, correct?

20 A Yes.

21 Q And, this check drawn on the account of Adwave
22 Company was in payment of these two invoices, was it not?

23 A Yes, it appears to be.

24 Q Am I correct, sir, that at no time other than within
25 the last two months, was ever, was there ever any internal

1 allocation or transfer of funds between Adwave Company and
2 Raystay to account for Adwave's having paid this, these
3 invoices?

4 A Adwave was funded separately from Raystay. I funded
5 it.

6 Q So there was no sharing of expenses between the two?

7 A Never.

8 Q And, so, Adwave was never reimbursed by Raystay for
9 any, for the expenses reflected here of \$4,164.14, is that
10 right?

11 A Not to my knowledge.

12 Q If I could direct your attention to page 6 of TBF
13 Exhibit 292, you'll see that there's an entry marked there,
14 the third entry down, which refers to the filing of LPTV
15 network affiliation agreements with the Commission. Now, it's
16 true, is it not, that your operating station TV40 license of
17 Dillsburg was a party to various network affiliation
18 agreements prior to the date of this June 4 invoice, correct?

19 A The TV40 agreements I, I don't have a good
20 recollection of. I'm not sure that any of those are what's
21 mentioned here. I really don't know what's mentioned, what
22 this is.

23 Q Let me see if I can provide you with a document to
24 refresh your recollection. I suppose we might mark them for
25 identification for ease of reference, although --

1 JUDGE CHACHKIN: No, no, no. Let's, let's not put
2 it in the record if we don't need it.

3 MR. HOLT: Yeah, I know.

4 JUDGE CHACHKIN: If you just want to show it to him.

5 MR. HOLT: Yeah. I know, yeah. I'll provide a copy
6 of these to Mr. Bechtel and to the Judge.

7 BY MR. HOLT:

8 Q Mr. Gardner, what I've handed you are two documents.
9 The first of the documents dated Mar--, May 13, 1990, which is
10 a letter on the letterhead of Cohen and Berfield directed to
11 the Commission which makes reference to copies of network
12 affiliation agreements that were entered into with respect to
13 television station W50AF at Dillsburg. And attached to that
14 letter are a variety of agreements that appear to have been
15 filed with the Commission with the letter. Do you have that
16 document before you?

17 A Yes, I do.

18 Q And can you confirm that the agreements attached to
19 the letter related to the operation of TV40?

20 A Yes.

21 Q And I've also handed you a second letter dated
22 January 15, 1991, also directed to Donna Searcy at the Federal
23 Communications Commission signed by Mr. Schauble at the law
24 firm of Cohen and Berfield, which also makes reference to the
25 enclosure of network affiliation agreements, actually one in

1 particular, concerning television station W40AF at Dillsburg.

2 A Yes.

3 Q And you can confirm for me that the affiliation
4 agreements attached to this letter were also entered into with
5 respect to TV40?

6 A Yes, I've signed them.

7 Q Now, there was, there were never any -- agreements
8 between Raystay and any other entity that concern the
9 operation of the low power construction permits, were there?

10 A These are --

11 Q I'm sorry, the un, the unbuilt low power
12 construction permits, my question was probably confusing. Let
13 me start all over for you. To your knowledge, at any time,
14 were there ever any network affiliation agreements between
15 Raystay and any other entity concerning the operation of the
16 unbuilt low power construction permits?

17 A I don't know of any no.

18 Q You're not aware of any?

19 A I'm not aware of any.

20 Q And if there had been, you would be aware of such
21 agreements, correct?

22 A At the time I would have been aware of it.
23 Obviously, I had even forgot about these.

24 Q Now the June 4, 1990 invoice at page six of TBF
25 Exhibit 292 makes reference to a Ms. Erica Bishop, or it

1 actually makes reference to a Ms. Bishop. Was that Ms. Erica
2 Bishop?

3 A That's correct.

4 Q And she was the station manager of TV40 at Dillsburg
5 at around the time of this invoice, correct?

6 A That's correct.

7 Q Ms. Bishop had no responsibilities with respect to
8 the construction or operation of the low power, unbuilt low
9 power construction permits, did she?

10 A No, she didn't.

11 Q If I can direct your attention to page 15 of TBF
12 Exhibit 292. It's an invoice dated November 9, 1990. Makes
13 reference to discussions with Mr. Mosebach.

14 A I have that.

15 Q You have that before you? Now, that reference is to
16 a Mr. Robert Mosebach, is that correct?

17 A It doesn't say Robert, but his name was Robert
18 Mosebach.

19 Q M-O-S-E-B-A-C-H?

20 A That's correct.

21 Q And he was the station manager of TV40 at around the
22 time of this invoice, correct?

23 A I believe Ms. Bishop reported to Mr. Mosebach.

24 Q I see. Now, Mr. Mosebach had no duties or
25 responsibilities with respect to the construction or operation

1 of the low power construction permits, did he?

2 A Not that I'm aware of.

3 Q I think that concludes my questions, Your Honor.

4 Thank you.

5 JUDGE CHACHKIN: -- any cross examination?

6 MR. SCHONMAN: Very brief.

7 CROSS EXAMINATION

8 BY MR. SCHONMAN:

9 Q Mr. Gardner, if I understand it correctly, at no
10 time before the Red Lion assignment application was granted
11 did you see the Red Lion application for assignment?

12 A I don't recall seeing that, no.

13 Q At any time before the Red Lion assignment
14 application was granted, did you have any knowledge about any
15 of the representations that were made in the application?

16 A I didn't see the application and I did not review
17 any of it, no.

18 Q Did you have any knowledge about any of the
19 representations in the application before the application was
20 granted?

21 A It's possible that Lee Sandifer would have discussed
22 this with me, but I just don't have any recollection of it.

23 Q Let me direct your attention to Glendale Exhibit
24 Number 227, page twenty. And that's a certification of
25 expenses on Raystay Company letterhead.

1 A Yes, I have it.

2 Q Am I correct that at no time before the Red Lion
3 assignment application was granted did you see this
4 certification of expenses?

5 A The first time I recall seeing this was in
6 preparation for this deposition.

7 Q At any time before the Red Lion application for
8 assignment was granted, did you have any knowledge about the
9 contents of this certification?

10 A I can't recall of any, no.

11 MR. SCHONMAN: I have no further questions, Your
12 Honor.

13 JUDGE CHACHKIN: Any redirect?

14 MR. BECHTEL: Can I consult with my co-counsel?
15 There's a question on the previous proceeding --

16 JUDGE CHACHKIN: We'll go off the record for a
17 couple minutes.

18 (Off the record at 11:28. Back on the record at 11:31.)

19 MR. HOLT: Your Honor, there's just one point before
20 we proceed. I neglected to move TBF Exhibit 293 into evidence
21 and I would like to do so at this time.

22 JUDGE CHACHKIN: Any objection?

23 MR. BECHTEL: Which one is 293?

24 JUDGE CHACHKIN: That's the amendment.

25 MR. BECHTEL: No objection.

1 JUDGE CHACHKIN: TBF Exhibit 293 is received.

2 (Whereupon, the document referred to
3 as TBF Exhibit No. 293 was hereby
4 received into evidence.)

5 MR. BECHTEL: If it will please the Court, I would
6 like to direct the witness's attention to a question by Mr.
7 Holt early on about the date of his return to the office from
8 his trip and he referred to his desk calendar for some
9 scheduled appointments either on the 13th or the 14th and with
10 your permission I would like to show the desk calendar to the
11 witness and ask him to tell us the date when he first had an
12 appointment on his desk calendar.

13 MR. HOLT: If I can take a look at this.

14 MR. BECHTEL: Absolutely --

15 JUDGE CHACHKIN: You can Mr. Holt, the Bureau should
16 look at it also.

17 REDIRECT EXAMINATION

18 BY MR. BECHTEL:

19 Q And my question, sir, is, on which date do you first
20 show a time of a scheduled appointment?

21 A 2 p.m., Tuesday the 14th.

22 Q Now, with regard to Adwave Company, what corporate
23 office did you hold?

24 A I was the president.

25 Q And?

1 A I may have held other offices, also.

2 Q And how much of the stock did you own?

3 A I believe it was 100%.

4 Q All right. Now, with regard to Raystay Company,
5 what is your corporate office?

6 A I'm president.

7 Q And how much of the voting stock do you own.

8 A I own all of the voting stock.

9 Q Now, Mr. Holt ask, Mr. Holt asked you a question as
10 to, having shown, shown you a check where Adwave paid one of
11 these invoices that we now have in evidence. Whether Adwave
12 was ever reimbursed for having done so and your answer was no,
13 do you recall those questions and answers?

14 A I don't recall it, no. This was a check that he
15 showed me.

16 MR. HOLT: I don't believe that was my question. I
17 object, Your Honor.

18 JUDGE CHACHKIN: That was your question.

19 MR. HOLT: No, what, oh, I'm sorry, yes, I mis-- I
20 misunderstood the question.

21 MR. BECHTEL: I was trying to see if he remembered
22 it and perhaps I didn't say it right.

23 BY MR. BECHTEL:

24 Q Okay, we're looking at the blue book, Exhibit 283.
25 And what you ought to do, Mr. Gardner, is also look at the

1 invoices in question, because that's how it was presented to
2 you and that's Exhibit 292, this is a little separate one.
3 Bear with me one second, Judge, I don't have it either. --
4 copy of it, 292. I got it.

5 A Yes, I have it.

6 Q And you're looking at pages 3 and 4 starting out
7 with 410614 and --

8 A Yes, I recall him asking me questions about that.

9 Q All right. Now, I thought I had heard the question
10 and answer, and let me pose that. And then if I didn't hear
11 it correctly someone can help me. I thought counsel asked
12 you, has Adwave ever been reimbursed by Raystay for that
13 payment.

14 MR. HOLT: I think the question was, has Adwave
15 ever, was Adwave ever reimbursed for this payment at any time
16 before the start of these proceedings.

17 MR. BECHTEL: Oh, okay.

18 WITNESS: And the start of these proceedings, what
19 is that date?

20 MR. HOLT: That's not my question, sir.

21 MR. BECHTEL: I think it's the last three months.

22 WITNESS: The last three months?

23 MR. BECHTEL: Prior to that time?

24 WITNESS: No.

25 JUDGE CHACHKIN: It has been reimbursed since that

1 time?

2 WITNESS: Yes.

3 JUDGE CHACHKIN: When, approximately, was it
4 reimbursed?

5 WITNESS: In reviewing my testimony, we came upon
6 the fact that, apparently Adwave had paid an invoice that was
7 marked by Cohen and Berfield as Adwave. When it was
8 apparently a Raystay invoice and since Adwave Company has been
9 disbanded, or no longer legally exists, in order to correct
10 the record and make the proper disposition of the funds,
11 Raystay made a check out to me as the survivor of Adwave
12 Company. It was apparently a mistake in accounting that was
13 engendered by the invoice not being marked correctly.

14 MR. BECHTEL: That's all I have, sir.

15 MR. HOLT: I, I just have a couple quick follow ups.

16 RECROSS EXAMINATION

17 BY MR. HOLT:

18 Q If I could turn your attentions back to the entry in
19 your calendar that Mr. Bechtel referred you to. Do you have
20 that calendar before you?

21 A Yes, I have it.

22 Q After I was supplied a copy with this invoice, I
23 determined from Mr. Bechtel that portions of the entries for
24 Tuesday and Wednesday, or at least for Tuesday, had been
25 deleted. I presume because they didn't relate to matters

1 concerning this case. Do you recall what the entry was next
2 to the 2 p.m. meeting. Or let me rephrase. Did that, yeah,
3 there was an entry 2 p.m. in here, do you recall what the
4 subject of that meeting was?

5 A I don't recall what any of the entries were. I
6 supplied photocopies of it to my counsel. I had nothing to do
7 with the deletion.

8 Q There's also a second appointment that was marked on
9 Tuesday the fourteenth, was there not?

10 A I see 2 p, that would, in my shorthand would be 2
11 p.m. and that's all I see. If there was anything written in
12 there, I don't recall what it was.

13 Q To your recollection, was there any other entry made
14 on the June 14, a January 14 day that reflected a meeting
15 other than this 2 p.m. meeting that occurred?

16 A I have so little recollection of this. I remember
17 seeing this, photocopying it and sending it. And, I have no
18 recollection of any of the entries that were there.

19 MR. HOLT: Mr. Bechtel, perhaps if you have the
20 original, that might help him refresh his recollection.

21 MR. BECHTEL: Why is it relevant?

22 JUDGE CHACHKIN: I don't have the slightest idea.

23 MR. BECHTEL: I don't either.

24 JUDGE CHACHKIN: Does Tuesday or Wednesday make any
25 difference?

1 MR. BECHTEL: I furnished documents from which we
2 marked out all of the information that didn't relate to the,
3 to the, to the request and that's what the witness is looking
4 at.

5 MR. HOLT: Point well taken, Your Honor, I'll move
6 on.

7 BY MR. HOLT:

8 Q Your testimony, I believe in response to Mr.
9 Bechtel's question, is that you are the president and 100%
10 stockhold, voting stockholder of Raystay Company, correct?

11 A That's correct.

12 Q And I presume that there are certain non-voting
13 stockholders.

14 A That's correct.

15 Q Now, at the time of the June 4, 1990, I'm sorry,
16 April 4, 1990 invoice, it's reflected on page 3 of TBF Exhibit
17 292, were you the voting, 100% voting stockholder of Raystay
18 at that time?

19 A Yes, I believe I was.

20 Q Mr. Gardner, it's true, is it not, that Raystay was
21 dissolved sometime in Jan--, I'm sorry, Adwave was dissolved
22 sometime in July of 1992?

23 A I believe that's correct, yes.

24 MR. HOLT: I have no further questions.

25 JUDGE CHACHKIN: You're excused. Thank you. We

1 have another witness?

2 MR. BECHTEL: Mr. Cohen is 5 minutes away.

3 JUDGE CHACHKIN: Well, we can do one of two things.

4 We could recess until 1 o'clock, have our lunch now and start

5 with Mr. Cohen at 1 o'clock or call him and recess at 12:30.

6 I don't know, maybe the former is --

7 MR. HOLT: I'd prefer the former, if I could get
8 some food in me.

9 MR. BECHTEL: I would prefer let's take a break.

10 JUDGE CHACHKIN: All right. We'll be in recess
11 until 1 o'clock.

12 (Whereupon a recess was taken for lunch from 11:40 a.m.
13 until 1:03 p.m.)

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1 A F T E R N O O N S E S S I O N

2 JUDGE CHACHKIN: Let's go back on the record. I see
3 you have another witness.

4 MR. BECHTEL: Yes, sir.

5 Whereupon,

6 LEWIS I. COHEN

7 having first been duly sworn, was called as a witness herein
8 and was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BECHTEL:

11 Q For the record, would you state your name and
12 business address?

13 A Lewis I. Cohen, 1129 20th Street, N.W., Washington,
14 D.C.

15 Q And are you the Lewis Cohen referred to in Glendale
16 Exhibit 225?

17 A I am.

18 MR. BECHTEL: The witness is available for cross
19 examination.

20 JUDGE CHACHKIN: Mr. Holt?

21 MR. HOLT: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. HOLT:

24 Q Mr. Cohen, during the period 1989 through 1992, was
25 it the practice of your law firm to charge a standard hourly

1 rate for legal services rendered by you and Mr. Berfield?

2 A To Raystay or to any client?

3 Q To Raystay.

4 A We charged an hourly rate of \$200 and that was
5 adjusted upwards or downwards, depending upon what the
6 services were. And there was a time, I can recall, when we
7 agreed upon a project price and at that time we charged the
8 price that was agreed upon.

9 Q And that project was the development and
10 implementation of a compliance program?

11 A That's correct.

12 Q What was the price that you agreed on?

13 A I'm relying on my recollection and I could be
14 incorrect, but I think it was \$1,500.

15 Q And that compliance program was to relate to the
16 operations of TV40, correct?

17 A That is incorrect.

18 Q Could you explain to me what the compliance program
19 was to relate to?

20 A The com--, in order to answer your question, Mr.
21 Holt, I'm going to have to say more than just a few words.
22 The compliance program was devised in connection with
23 obtaining a grant of the five construction permits. Had there
24 been no five construction permit applications pending, there
25 never would have been a compliance program.

1 Q It would have been necessary for a compliance
2 program to have been developed at the time that an entity
3 affiliated with George Gardner applied to the Commission for
4 an additional FCC authorization, correct?

5 A I don't understand your question.

6 Q Well, would it have been necessary to develop a
7 compliance program in the event that George Gardner, or any
8 of, any entity with which he associated as shareholder,
9 applied to the FCC for an authorization to acquire a
10 construction permit or the renewal of a station or something
11 of that nature?

12 A In order to answer your question, I'm going to have
13 to explain my answer.

14 Q Please do.

15 A The only reason that the compliance program came
16 about was that after we filed the initial showing to try to
17 get George Gardner qualified before the Commission as a
18 broadcast licensee, that showing didn't completely satisfy the
19 Commission staff. I had several conversations with various
20 staff members concerning getting the five construction permit
21 applications granted. This, as a consequence of the
22 Commission's decision in the Ft. Lauder--, the Ft. Laudergo--,
23 the Ft. Lauderdale case, where the Commission, in approving
24 the settlement, said that Mr. Gardner could become a licensee
25 if we could establish his qualifications, or if he could

1 establish his qualifications. The only vehicle that we were
2 aware of that was pending at the time to use to establish Mr.
3 Gardner's qualifications were the then pending five
4 construction permit applications. And so we filed the showing
5 that I testified to. And as I said a moment ago, the
6 Commission's staff wasn't completely persuaded by the showing
7 that we filed and upon, I then had a series of conferences
8 with various Commission staff members who were involved in
9 this and either the staff member or I, I can't recall which,
10 came up with the idea that there should be a compliance
11 program. And, that's why the compliance program was conceived
12 and that's why the compliance program was filed with the
13 Commission. Had there been no five construction permit
14 applications, there never would have been a compliance program
15 for TV40.

16 Q And it was conceived from the outset that the
17 compliance program would apply initially to TV40 and then
18 subsequently to the construction permits as they were
19 constructed and operating?

20 A I would not phrase it that way.

21 Q How would you phrase it?

22 A I would phrase it quite differently.

23 Q In what way would you phrase it?

24 A I, I wanted to think about what I wanted to say, if
25 you'll give me a minute. The compliance program was devised

1 to obtain a grant of the construction permit applications.
2 TV40 was in existence and TV40 was going to be the subject of
3 the compliance program also because it was there. But TV40
4 was incidental, or ancillary, subsidiary, to the, to the
5 reason why the compliance program was created.

6 Q So you're saying that the compliance program was
7 really created for the purpose of operating a low power
8 construction permits for which Raystay had applications
9 pending with the TV40 being a incidental component of that?

10 A Or being part of it, but it was the tail, not the
11 head.

12 Q Let me get back to the rates that were charged by
13 your firm for services rendered by you and Mr. Berfield to
14 Raystay. Did you have a, I believe you've indicated that
15 there was a base figure of \$200 an hour which was adjusted
16 upwards or downwards, depending on the services that were
17 rendered, correct?

18 A Correct.

19 Q And, what was your practice with respect to making
20 that adjustment? Was it made at the time that the bill was
21 issued, or when would, when would you make the determination
22 as to what fees to charge.

23 A It was an ad hoc determination.

24 Q And when would that determination typically be made?

25 A Ad hoc, by definition, it would occur whenever it

1 | would, whenever it was appropriate. Most of the time it would
2 | occur when the bills were prepared but not always.

3 | Q Typically after the services were rendered?

4 | A Typically but not exclusively.

5 | Q And, you would at that time make an assessment of
6 | what services had been rendered and would add a value to your
7 | base rate of \$200 depending on your assessment?

8 | A Depending upon the uniqueness of the service and the
9 | value to the client.

10 | Q Did you maintain records or time diaries showing
11 | what work you performed on matters during the period 1989
12 | through 1992?

13 | A I did.

14 | Q And was it your practice to retain those time
15 | diaries?

16 | A Retain them for a short period of time, but they
17 | have, but not to retain them for more than, my practice was
18 | not to retain them for more than a year.

19 | Q Did those time records show the amounts of time that
20 | you had spent and the various services you performed or did
21 | they show simply what you had done?

22 | A No, they showed the amount of time and the services.

23 | Q Was it the practice of your firm during the period
24 | 1989 to 1992 to charge a standard hourly rate for legal
25 | services rendered by John Schauble and Roy Boyce?

1 A To Raystay?

2 Q To Raystay.

3 A Same practice as I described earlier. That is, we
4 had a \$200 hourly rate which we adjusted upwards or downwards,
5 depending upon the circumstance. It was no different for, for
6 Roy or for John.

7 Q It came a time, did there not, when you reviewed
8 with Mr. Berfield certain legal invoices that had been
9 prepared relating to low power construction permits that
10 Raystay held for Lebanon, Lancaster and Red Lion, correct?

11 A Could I hear the question again, please?

12 Q There came a time, did there not, when you reviewed
13 with Mr. Berfield certain legal invoices that you had prepared
14 relating to the low power construction permits held by Raystay
15 held for Red Lion, Lancaster and Lebanon?

16 A I'm not trying to be picky, but you use the word
17 review and I, in all truthfulness, I cannot tell you that it
18 was a review. My recollection was that Mort spoke to me about
19 invoices that I had prepared. But I can't be any more certain
20 than saying that he spoke with me and the word review to me
21 has a connotation which may not have been what occurred
22 between Mort and myself. I had a clear recollection of him
23 talking to me about the bill, asking me something about the
24 bills, but I can't tell you what it was because this was,
25 what, 4 years ago.

1 Q Do you recall during, was this one conversation or a
2 series of conversations?

3 A I think it was one conversation but I can't be
4 certain of that. It may have been more than one, but I think
5 it was one.

6 Q Do you recall approximately when this conversation
7 occurred?

8 A I tried to recall that. I was asked that question
9 at my deposition and I cannot recall it. It was too long ago.

10 Q Do you recall what you discussed during this
11 conversation with respect to legal invoices that you had
12 prepared regarding the low power construction permit?

13 A I cannot recall the substance of the conversations
14 and I've tried hard to remember. All I can recall is that
15 Mort talked to me about the bill but I cannot recall the
16 substance of the conversation. It was simply too long ago.

17 Q Well, let me direct your attention to TBF Exhibit
18 292. I believe it should be in the materials that I left up
19 there for you.

20 A 292?

21 Q Yes.

22 A Is it in the green binder?

23 Q No, it's a loose-- It has a Bechtel and Cole
24 designation.

25 JUDGE CHACHKIN: The witness has the document.

1 MR. HOLT: Thank you, Your Honor.

2 JUDGE CHACHKIN: What page do you want to refer him
3 to?

4 BY MR. HOLT:

5 Q I'd like him to begin with page 3. It's a invoice
6 on the letterhead of Cohen and Berfield dated April 4, 1990
7 and I'll Mr. Cohen whether that's an invoice that, is that an
8 invoice that you recall preparing?

9 A Yes.

10 Q And, do you recall whether you discussed this
11 invoice with Mr. Berfield during the conversation that you had
12 regarding the invoices?

13 A It's my best recollection that this was an invoice
14 that Mort talked to me about, correct.

15 Q Do you recall whether Mr. Berfield showed you this
16 invoice at the time you discussed it?

17 A I think so, but I'm not certain of that. I think
18 that's the case.

19 Q Is it likely that he did?

20 A I think it's more likely he did than more likely
21 that he didn't.

22 Q Do you recall discussing with him the entries
23 specified in this invoice?

24 A As I stated earlier, I've tried my very best to
25 recall the substance of that conversation and I cannot. It

1 was too long ago. I can just remember that Mort talked to me
2 about this bill.

3 Q Can you relate to me anything regarding the
4 substance of that conversation?

5 A No. It was too long ago. My memory is not that
6 good. I might point out to you that I'm a reasonably busy
7 practicing lawyer and I deal with a relatively large number of
8 items and projects and I, I simply don't have the recall for
9 events of this nature that occurred that long ago. My memory
10 is just not that good.

11 Q I see. Now, do you recall when you discussed this
12 invoice, whether you reviewed any time records that you
13 maintained showing the services that you had provided?

14 A I want to be responsive to your questions, Mr. Holt,
15 and I can tell you only that I cannot remember anything about
16 the conversation other than the fact that I, that I had it. I
17 don't, I have no recollection of when looking at supporting
18 documents or underlying documents.

19 Q Let me direct your attention to a document dated
20 June 4, 1990 which is found at page 6 and 7. It's an invoice
21 on the letterhead of Cohen and Berfield as well and to that
22 you'll see there are appended time records which I think the
23 record will establish or generated in conjunction with the
24 preparation of this invoice. My question to you is, is your
25 response the same with respect to your ability to recall